

MICHAEL J. GARCIA  
 United States Attorney for the  
 Southern District of New York  
 By: TOMOKO ONOZAWA (TO-8694)  
 Assistant United States Attorney  
 86 Chambers Street, Third Floor  
 New York, New York 10007  
 Telephone: (212) 637-2721  
 Facsimile: (212) 637-2686  
 E-mail: tomoko.onozawa@usdoj.gov

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK



SAMANTHA SOMAI, infant by CHRISTINA RIVERA, as mother and natural guardian and CHRISTINA RIVERA, individually,

Plaintiffs,

-against-

MORRIS HEIGHTS HEALTH CENTER, INC., d/b/a MORRIS HEIGHTS HEALTH CENTER, and WANDA McCOY, M.D.,

Defendants.

*JUDGE JONES*

x : NOTICE OF REMOVAL  
 08 CV 3151  
 08 Civ.

: from the Supreme Court of the  
 State of New York, County of Bronx,  
 Index No. 301569/07

Defendants Morris Heights Health Center, Inc., d/b/a Morris Heights Health Center ("Morris Heights"), and Wanda McCoy, M.D. ("Dr. McCoy") (collectively, the "Defendants"), by their attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York.

The grounds for removal are as follows:

1. On or about October 5, 2007, infant-plaintiff Samantha Somai, by her mother and natural guardian Christina Rivera (collectively "Plaintiffs"), commenced an action against Morris

Heights and Dr. McCoy in the Supreme Court of the State of New York, County of Bronx, by filing a Summons and Verified Complaint under Index Number 301569/07. A true and correct copy of the Summons and Verified Complaint is attached hereto as Exhibit A.

2. In their Verified Complaint, Plaintiffs allege that “[f]rom on or about April 15, 2005, and thereafter, infant-Plaintiff SAMANTHA SOMAI, by CHRISTINA RIVERA, as mother and natural guardian, sought the professional care of Defendant MORRIS HEIGHTS HEALTH CENTER, INC. D/B/A MORRIS HEIGHTS HEALTH CENTER for certain medical complaints from which she was suffering, and this defendant, its agents, servants and employees rendered medical care, diagnosis treatment and services to her.” (Compl. ¶ 12).

3. Pursuant to section 224 of the Public Health Service Act, as amended by the Federally Supported Health Centers Act of 1995, 42 U.S.C. § 201 *et seq.*, Morris Heights and its employees, including Dr. McCoy, were deemed to be employees of the United States Government effective June 23, 1996, and that status has continued uninterrupted since that date. *See* 42 U.S.C. § 233(a), (g)-(n). Accordingly, the Defendants are eligible for Federal Tort Claims Act coverage in connection with any allegations regarding medical care provided to infant-plaintiff Samantha Somai by the Defendants on or after April 15, 2005.

4. The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401(b) and 2671-2680, provides the exclusive remedy with respect to Plaintiffs’ claims against the Defendants. *See* 42 U.S.C. § 233(a).

5. Pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2), this action may be removed to this Court because: (i) trial has not yet been had of this action; and (ii) this is a civil action brought against parties deemed to be employees of the United States Government for

purposes of the FTCA. A true and correct copy of the Certification of the Michael J. Garcia, United States Attorney for the Southern District of New York, dated March 25, 2008, certifying that the Defendants are employees of the United States for purpose of Plaintiffs' claims against them, is attached hereto as Exhibit B.

Dated: New York, New York  
March 28, 2008

Respectfully submitted,

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York

By:

  
TOMOKO ONOZAWA (TO-8694)  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Telephone: (212) 637-2721  
Facsimile: (212) 637-2686

TO: VIA FEDERAL EXPRESS

Jason Shapiro, Esq.  
Shapiro Law Offices  
3205 Grand Concourse, Suite 1  
Bronx, New York 10468  
*Attorney for Plaintiffs*

Tracey A. Reiser-Pertoso, Esq.  
Kaufman Borgeest & Ryan LLP  
200 Summit Lake Drive  
Valhalla, New York 10595  
*Attorney for Morris Heights Health Center, Inc.*  
*d/b/a Morris Heights Health Center and*  
*Wanda McCoy, M.D.*

## **EXHIBIT A**

10/31/2007

10/31/2007 10/31/2007  
14:30

02:57PM Received 8490822 CLA472894014D14 Pg 5/14

NO. 403 D05

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONXX  
SAMANTHA SOMAL, infant, by CHRISTINA RIVERA, as  
mother and natural guardian and CHRISTINA RIVERA,  
Individually,

Plaintiffs,

-against-

MORRIS HEIGHTS HEALTH CENTER, INC., MORRIS  
HEIGHTS HEALTH CENTER, AND WANDA McCIDY,  
M.D.,

Defendants.

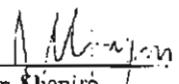
Index No.: 301569/07  
Date Purchased: 10/5/07

## SUMMONS

Plaintiff designates Bronx  
County as the place of trial.The basis of venue is:  
Plaintiff's ResidencePlaintiff's reside at:  
316 E. 163<sup>rd</sup> Street  
Bronx, NY 10451  
County of Bronx

## To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York  
September 20, 2007
  
 Jason Shapiro  
 Shapiro Law Offices  
 Attorneys for Plaintiff  
 3205 Grand Concourse, Suite 1  
 Bronx, NY 10468  
 718-295-7000

10/31/2007

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NO. 403 D06

TO: MORRIS HEIGHTS HEALTH CENTER  
85 W. BURNSIDE AVENUE  
BRONX, NY 10453

-OR-

ROBERT P. BORSODY, P.C.  
909 THIRD AVENUE, 17<sup>TH</sup> FL  
NEW YORK, NY 10022

WANDA McCOY, M.D.  
85 W. BURNSIDE AVENUE  
BRONX, NY 10453

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CARDENITAL DEPT

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NO. 403 087

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONXX  
SAMANTHA SOMAI, infant, by CHRISTINA RIVERA, as  
mother and natural guardian and CHRISTINA RIVERA,  
individually,Index No.:  
Date Purchased:

VERIFIED COMPLAINT

Plaintiffs,

against-

MORRIS HEIGHTS HEALTH CENTER, INC. D/B/A  
MORRIS HEIGHTS HEALTH CENTER, AND WANDA  
MCCOY, M.D.,

Defendants.

X

Plaintiffs, by their attorneys, SHAPIRO LAW OFFICES, complaining of the Defendants,  
respectfully alleges, upon information and belief, as follows:AS AND FOR A FIRST CAUSE OF ACTION

1. At the time of the commencement of this action, Plaintiffs were, and still are residents of the County of Bronx, State of New York.
2. At all times mentioned herein, Defendant MORRIS HEIGHTS HEALTH CENTER, INC. D/B/A MORRIS HEIGHTS HEALTH CENTER was a domestic corporation duly organized and existing under, and by virtue of, the laws of the State of New York.
3. At all times mentioned herein, the principal place of business of Defendant MORRIS HEIGHTS HEALTH CENTER, INC. D/B/A MORRIS HEIGHTS HEALTH CENTER was located in the State of New York, County of Bronx.

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NO. 403 P08

4. At all times mentioned herein, the principal place of business of Defendant **WANDA MCCOY, M.D.** was, as still is, a resident of the County of Bronx, State of New York.

5. At all times mentioned herein **MORRIS HEIGHTS HEALTH CENTER, INC.** was, and still is, the owner of a health-care facility known as **MORRIS HEIGHTS HEALTH CENTER**.

6. At all times mentioned herein, Defendant **MORRIS HEIGHTS HEALTH CENTER INC. D/B/A MORRIS HEIGHTS HEALTH CENTER** owned, operated, controlled, and managed a health care facility pursuant to the laws of the State of New York for the care of the sick, known as **MORRIS HEIGHTS HEALTH CENTER** located at 85 W. Burnside Avenue, Bronx, New York which provided personnel, including doctors, nurses, attendants and others for the care and treatment of its patients and which held itself out to the public as furnishing treatment facilities where patients, including the infant-plaintiff **SAMANATHA SOMAI**, could be treated for various ailments.

7. At all times mentioned herein, Defendant **WANDA MCCOY, M.D.** was a physician duly licensed to practice medicine in the State of New York.

8. At all times mentioned herein, Defendant **WANDA MCCOY, M.D.** held herself out to the public, and more particularly to the infant-plaintiff, **SAMANATHA SOMAI**, be a physician offering professional services, as possessing the proper degree of learning and skill necessary to render medical services in accordance with good and accepted medical practice in that she undertook to use reasonable care and diligence in the treatment of the infant-plaintiff, **SAMANATHA SOMAI**.

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9. At all times mentioned herein, Defendant WANDA McCOW, M.D. represented that she was competent to perform and render all the medical care, treatment, services, and advice required by the infant-Plaintiff.

10. At all times mentioned herein, Defendant WANDA McCOW, M.D. was an employee of Defendant MORRIS HEIGHTS HEALTH CENTER, INC., D/B/A MORRIS HEIGHTS HEALTH CENTER.

11. At all times mentioned herein, Defendants MORRIS HEIGHTS HEALTH CENTER, INC., D/B/A MORRIS HEIGHTS HEALTH CENTER and WANDA McCOW, M.D. stood in such a relationship with each other in their care and treatment of infant-Plaintiff SAMANTHA SOMAI as to make each liable for the acts and omissions of the other.

12. From on or about April 15, 2005, and thereafter, infant-Plaintiff SAMANTHA SOMAI, by CHRISTINA RIVERA, as mother and natural guardian, sought the professional care of Defendant MORRIS HEIGHTS HEALTH CENTER, INC., D/B/A MORRIS HEIGHTS HEALTH CENTER for certain medical complaints from which she was suffering, and this defendant, its agents, servants and employees rendered medical care, diagnosis, treatment and services to her.

13. From on or about April 15, 2005, and thereafter, infant-Plaintiff SAMANTHA SOMAI, by CHRISTINA RIVERA, as mother and natural guardian sought the professional care of Defendant WANDA McCOW, M.D. for certain medical complaints from which she was suffering, and this defendant, its agents, servants and employees rendered medical care, diagnosis, treatment and services to her.

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NO. 403 D10

14. Defendants, their, agents, servants, partners and/or employees were careless, negligent and unskillful in the treatment and services rendered to the infant-plaintiff **SAMANTHA SOMAI**; in that they negligently and carelessly departed from good and accepted standards of medical practice and procedures in connection with the medical care rendered to and on behalf of plaintiff **SAMANTHA SOMAI**; in that they failed to exercise that degree of care, caution, prudence, skill, ability, professional knowledge and training generally utilized by physicians and medical care facilities in the community; failed to recognize and appreciate the signs and symptoms of plaintiff's condition; failed to order appropriate studies, failed to obtain appropriate and necessary tissue samples, failed to render a proper and timely diagnosis of plaintiff's condition; failed to immediately render assistance to plaintiff when his condition so required; failed to properly and promptly diagnose plaintiff's condition.

15. By reason of the above, infant-Plaintiff **SAMANTHA SOMAI** has sustained great pain, agony, injury, suffering, disability, and hospitalization, as well as mental anguish and emotional distress.

16. By reason of the above, infant-Plaintiff **SAMANTHA SOMAI** has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

17. The limitations on liability set forth in CPLR §1600 et. Seq. do not apply.

18. The limitations on liability set forth in CPLR §1600 et. Seq. do not apply by reason of one or more of the exemptions set forth therein in CPLR §1602.

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AS AND FOR A SECOND CAUSE OF ACTION

19. Plaintiff's repeat and reallege each and every allegation set forth above with the same force and effect as though set forth herein at length.

20. Defendants, their agents, servants and employees, failed to inform infant-Plaintiff **SAMANTHA SOMAI**, by **CHRISTINA RIVERA**, as mother and natural guardian of **SAMANTHA SOMAI** of the reasonably foreseeable risks and benefits of, and alternatives to, the treatment proposed and rendered, which would have been disclosed by reasonable medical practitioners in similar circumstances, in consequence of which Defendants failed to obtain an informed consent thereto.

21. A reasonably prudent person in Plaintiff's position would not have undergone the treatment and diagnosis rendered herein if she had been fully informed.

22. The lack of informed consent alleged herein is a proximate cause of the injuries, conditions and disabilities for which recovery is sought.

23. By reason of the above, infant-Plaintiff **SAMANTHA SOMAI** has sustained great pain, agony, injury, suffering, disability, and hospitalization, as well as mental anguish and emotional distress.

24. By reason of the above, infant-Plaintiff **SAMANTHA SOMAI** has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

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CEASE AND DESIST

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AS AND FOR A THIRD CAUSE OF ACTION

25. Plaintiff's repeat and reallege each and every allegation set forth above with the same force and effect as though set forth herein at length.

26. That at all times hereinafter mentioned, Plaintiff CHRISTINA RIVERA is the mother and natural guardian of the infant-plaintiff SAMANTHA SOMAI and as such was entitled to the society, services and consortium of SAMANTHA SOMAI.

27. That by reason of the foregoing, plaintiff CHRISTINA RIVERA was deprived of the society, services and consortium of the infant plaintiff SAMANTHA SOMAI and shall forever be deprived of said society, services and consortium.

28. By reason of the above, CHRISTINA RIVERA has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demand judgment against the Defendants herein on all causes of action, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: Bronx, New York  
September 19, 2007

*(Signature)*  
\_\_\_\_\_  
Jason Shapiro  
Shapiro Law Offices  
Attorneys for Plaintiff  
3205 Grand Concourse, Suite 1  
Bronx, NY 10468  
718-295-7000

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
SAMANTHA SUMAI, infant, by CHRISTINA RIVERA, as  
mother and natural guardian and CHRISTINA RIVERA,  
individually,

CERTIFICATE OF  
MERIT PURSUANT  
TO CPLR §2016

Index No.:  
Date Purchased:

Plaintiffs,

-against-

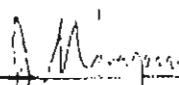
MORRIS HEIGHTS HEALTH CENTER, INC., MORRIS  
HEIGHTS HEALTH CENTER AND WANDA MCCOY,  
M.D.,

Defendants.

-----X  
JASON SHAPIRO, an attorney duly admitted to practice law before the Courts of the State of  
New York, hereby affirms, pursuant to CPLR §2016:

1. I am a member of Shapiro Law Offices.
2. I have reviewed the facts of this case and have consulted with at least one physician who is licensed to practice in this State, or any other State, and I reasonably believe that said physician is knowledgeable as to relevant issues involved in this particular action, and I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of this action.

Dated: Bronx, New York  
September 20, 2007

  
\_\_\_\_\_  
Jason Shapiro  
Shapiro Law Offices  
Attorneys for Plaintiff  
3205 Grand Concourse, Suite 1  
Bronx, NY 10468  
718-295-7000

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NO.403 D14

Index No.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX.

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SAMANATHA SOMAI, infant, by CHRISTINA RIVERA, as mother and natural guardian and  
CHRISTINA RIVERA, individually,

Plaintiffs.

-against-

MORRIS HEIGHTS HEALTH CENTER, INC., MORRIS HEIGHTS HEALTH CENTER AND  
WANDA MCCOY, M.D.,

Defendants.

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SUMMONS AND VERIFIED COMPLAINT

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## SHAPIRO LAW OFFICES

*Attorneys for Plaintiff*  
3205 Grand Concourse, Suite 1  
Bronx, NY 10468  
718-295-7700

## ATTORNEY CERTIFICATION

The undersigned, an Attorney admitted to  
practice in the Courts of New York State,  
certifies that, upon information, belief  
and reasonable inquiry, the contentions  
contained in the above-referenced document(s)  
are not frivolous.

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JASON SHAPIRO, ESQ.

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To:  
Attorney(s) forService of a copy of the within  
is hereby admitted.

Dated:

\_\_\_\_\_  
Attorney(s) for

10/31/2007 10:31 AM

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## **EXHIBIT B**

MICHAEL J. GARCIA  
 United States Attorney for the  
 Southern District of New York  
 By: TOMOKO ONOZAWA (TO-8694)  
 Assistant United States Attorney  
 86 Chambers Street, Third Floor  
 New York, New York 10007  
 Telephone: (212) 637-2721  
 Facsimile: (212) 637-2686  
 tomoko.onozawa@usdoj.gov

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

	-----X
SAMANTHA SOMAI, et al.,	:
	:
Plaintiffs,	:\u00093CERTIFICATION
	:
v.	:\u0009308 Civ. <u>3151</u>
	:
MORRIS HEIGHTS HEALTH CENTER, INC. d/b/a MORRIS HEIGHTS HEALTH CENTER, AND WANDA McCOY, M.D.,	:\u00093Index No. 301569/07
	:\u00093Supreme Court of New York, Bronx County
	:
Defendants.	:\u00093
	:
-----X	

I, MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, pursuant to the provisions of 28 U.S.C. § 2679(d), and by virtue of the authority vested in me by the Attorney General under 28 C.F.R. § 15.4, hereby certify, on the information now available, that defendants Morris Heights Health Center and Wanda McCoy, M.D. were acting within the scope of employment at the time of the incident out of which plaintiffs' claim arose.

Dated: New York, New York  
 March 25, 2008

  
 MICHAEL J. GARCIA *[Signature]*  
 United States Attorney  
 Southern District of New York